

OGC 72-1715

21 November 1972

MEMORANDUM FOR: SSA-DD/S

SUBJECT: Disallowance of Tax Deduction for  
Home Leave Expenses

1. In 1971 the United States Court of Appeals for the Ninth Circuit ruled that expenses incurred by a Foreign Service Officer of the Department of State while on home leave were deductible traveling expenses in the pursuit of a trade or business since home leave was a compulsory job requirement. B.C. Stratton, (CA-9) 71-72 USTC 9630. The Internal Revenue Service subsequently refused to acquiesce to the Circuit Court ruling. This means that the Service will challenge such deductions by taxpayers other than those living in states in the Ninth Judicial Circuit.

2. The Department of State Newsletter No. 137, dated September 1972, reported that another Foreign Service employee submitted an amended 1968 return making a similar deduction claim and was issued a tax refund. The employee was not a resident of the Ninth Judicial Circuit. The Deputy Assistant Commissioner, Compliance/IRS has advised me that the refund in the latter case was made on the basis of a survey procedure which provides for automatic refunds of small amounts claimed on an amended return. Such claims are subject to later examination. This claim has been examined and disallowed, and the taxpayer required to pay back to the Service the amount refunded. IRS continues to non-acquiesce in claims for deductions for home leave expenses involving individuals living outside of the Ninth Judicial Circuit.

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Assistant General Counsel

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cc: C/CSB